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5 WHEREAS, on February 7, 1992 this Court entered a Consent Decree (the "Decree")
6 between the United States on behalf of the Environmental Protection Agency ("EPA"), plaintiff in
7 this action, and Beazer East, Inc. ("Beazer"), defendant in this action, resolving the claims of EPA
8 contained in the Complaint filed pursuant to the Comprehensive Environmental Response,
9 Compensation and Liability Act, 42 U.S.C. section 9601 et seq by EPA against Beazer
10 concurrently with the lodging of the Consent Decree, which claims sought to compel Beazer to
11 perform certain remedial actions and to recover certain response costs that have been and will be
12 incurred by the United States in response to alleged releases and threatened releases from a facility
13 as defined in Section 101(9) of CERCLA, 42 U.S.C section 9601(9), known as the Koppers
14 Superfund Site located in Oroville, California (the "Site"); and

15 WHEREAS, the Decree was based upon Beazer's commitment to perform the Remedial
16 Action at the Site, which entailed implementation of the Record of Decision signed by the EPA
17 Region IX Regional Administrator on April 4, 1990 ("ROD") as changed by an Explanation of
18 Significant Differences issued concurrently with the Decree ; and

19 WHEREAS, the ROD has been amended twice since entry of the Decree: first, ROD
20 Amendment #1 was issued on August 29, 1996 to change the remedy for contaminated soils and,
21 second, ROD Amendment #2 was issued on September 23, 1999 to change the remedy for
22 contaminated groundwater; and

23 WHEREAS, the ROD Amendments require the implementation of institutional controls
24 at the Site to protect human health and the environment since hazardous substances will remain on
25 the Site after implementation of the amended remedy; and

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27 WHEREAS, the wood treating operation at the Site has been discontinued since entry of
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1 the Decree; and

2 WHEREAS, the parties to the Decree have determined that it is necessary and
3 appropriate to make certain revisions to the Decree to reflect ROD Amendment #1, ROD
4 Amendment #2, the requirements for institutional controls and the discontinuation of wood
5 treatment operations at the Site and to take into account new nomenclature and cleanup standards,
6 and those revisions are stipulated to herein:

7 IT IS THEREFORE STIPULATED that the Decree shall be revised in the following
8 respects:

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10 Page 2, paragraph comprising lines 12 through 15:

11 Insert after "April 4, 1990" the following: ", Explanation of Significant Differences
12 executed on January 29, 1991, ROD Amendment #1, executed on August 29, 1996 and ROD
13 Amendment #2, executed on September 23, 1999 (collectively, the "Amended ROD")

14 Page 2, paragraph beginning at line 12, shall therefore provide as follows:

15 WHEREAS, the decision by EPA on the remedial action to be implemented at the Site
16 is embodied in an Operable Unit Record of Decision ; executed on April 4, 1990,
17 Explanation of Significant Differences executed on January 29, 1991, ROD Amendment #1,
18 executed on August 29, 1996, and ROD Amendment #2, executed on September 23, 1999,
19 (collectively the "Amended ROD") on which the State had a reasonable opportunity to
20 review and comment.

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22 **SECTION II. PARTIES:**

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24 Paragraph II B, p. 4, first sentence, line 10: Strike "Koppers Industries, Inc. (KII)" and
25 insert "Beazer"; p. 4, line 11 strike "and operator"; p. 4, line 11 strike "and the wood treatment
26 plant thereon".
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1 The first sentence of Paragraph II B shall therefore provide as follows:

2 **Beazer is the current owner of the Property.**

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4 Paragraph II B, p. 4, fourth sentence, line 20: strike "KII" and insert "Koppers
5 Industries, Inc. ("KII")".

6 The fourth sentence of Paragraph II B shall therefore provide as follows:

7 **The Tar and Wood Products section of Koppers Company, Inc., including the**
8 **Oroville Site, was sold to Koppers Industries, Inc. ("KII") on December 28, 1988.**

9 Paragraph II C, p.5, lines 1 through 4: In line 1, strike "controls" and insert
10 "controlled"; in line 2, strike "ongoing" and insert, after "Property", "from December 1988
11 through October 2002"; in line 4, strike "ongoing" and add, at the end of the sentence, "and plant
12 closure".

13 Paragraph II C shall, therefore, provide as follows:

14 **C. KII controlled access to the Property and all records and information with**
15 **respect to operations on the Property from December 1988 through October 2002 and is**
16 **responsible for addressing environmental compliance issues relating to such operations and**
17 **plant closure.**

18 Add a new Paragraph II D, reading as follows: "Beazer acquired the Site from KII in
19 October of 2002, and now controls access to the Site".

20 Paragraph II D shall, therefore, provide as follows:

21 **D. Beazer acquired the Site from KII in October of 2002, and now controls access to**
22 **the Site.**

1 **SECTION IV. SITE BACKGROUND**

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3 Paragraph IV A, pp5--6: p5, line 24, strike "includes" and before "a 200 acre" insert "was
4 formerly the site of"; strike "operating"; p. 5, line 26, strike "has" and replace it with "had"; p.6,
5 line 2, strike "the present" and insert "March, 2001": p.6, line 3, before period at end of sentence,
6 insert "and eventually the facility was closed on March 15, 2001".

7 Paragraph IV A shall, therefore, provide as follows:

8 **A. The Koppers Site was formerly the site of a 200-acre wood treating plant located**
9 **in Butte County just south of the city limits of Oroville, California. The Property had a**
10 **lumber mill and then a wood treating plant from approximately 1920 to March, 2001.**
11 **Koppers Company, Inc. acquired the Property in 1955 and expanded wood treating**
12 **operations. KII operated the wood treating facility from 1988 through 2001 and eventually**
13 **the facility was closed on March 15, 2001.**

14 Paragraph IV B, last sentence, p.6, lines 16-17: Insert before period at end of sentence
15 "and wastes produced by this event, which contain hazardous substances, are buried on-site".

16 Paragraph IV B, last sentence, shall, therefore, provide as follows:

17 **A second explosion and fire in the pentachlorophenol treatment process occurred in**
18 **April 1987 and wastes produced by this event, which contain hazardous substances, are**
19 **buried on-site in a Corrective Action Management Unit ("CAMU").**

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21 **SECTION V. DEFINITIONS**

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24 Paragraph V F, p. 9, lines 26-27: strike lines 26-27 and insert "'DTSC' shall mean the
25 California Department of Toxic Substances Control, formerly California Department of Health
26 Services".

Paragraph V F shall, therefore, provide as follows:

DTSC shall mean the California Department of Toxic Substances Control, formerly California Department of Health Services.

Hereinafter, all original references in the Decree to "DHS" shall refer to "DTSC".

Paragraph V N, pp11-12: last sentence, p. 11, line 4, strike "contains" and insert "contained"; strike "current" and insert "former".

The last sentence of paragraph V N shall, therefore, provide as follows:

These parcels contained the former KII wood-treating operations and are part of the Site.

Paragraph V P, p. 11, lines 11-18: Strike lines 11-18 and insert the following, which shall comprise revised paragraph V P:

P. "Amended Record of Decision" or "Amended ROD" shall mean the Record of Decision describing the remedial action to be conducted at the Site signed by the EPA Region IX Regional Administrator on April 4, 1990, as amended by an Explanation of Significant Differences executed on January 29, 1991, ROD Amendment #1 executed on August 29, 1996 and ROD Amendment #2 executed on September 23, 1999, attached collectively hereto as Appendix A.

Paragraph V Q, p.11, line 20, insert "Amended" before "ROD". Paragraph V Q shall, therefore provide as follows:

Q. "Remedial Action" shall mean the implementation of the Amended ROD, in accordance with Section VIII hereof (Work to be performed) and other applicable provisions of the Decree, as may be modified pursuant to the provisions of this Consent Decree, and any schedules or plans required to be submitted pursuant to the Decree.

Paragraph V B[sic], p. 12, lines 5-10: p. 12, line 5, strike "B" and insert "R(1)"; strike "Remediation Goals" and insert "Remediation Standards"; p. 12, line 8, insert "Amended" after "in the"; p. 12, line 10, insert "amended" after "in the".

Former paragraph V B[sic] shall, therefore, provide as follows:

R(1). "Remediation Standards" shall mean the level(s) of clean-up to be achieved in the groundwater, soil, sediments and surface water at the Site. These levels shall include those remedial objectives identified in the Amended ROD and those criteria established by the applicable or relevant and appropriate requirements ("ARARs") identified in the Amended ROD.

Hereinafter, all original references in the Decree to "remediation goals" shall refer to "remediation standards".

Page 12, line 21 et seq., insert the following as paragraph V V(1):

V(1). "Statement of Work" or "SOW" shall mean the Statement of Work, as amended, attached hereto as Appendix C.

SECTION VI. PURPOSE

Paragraph VI B, p.13, line 19 through p.14, line 4: strike p. 13, line 19 through p.14, line 4 and insert the following, which shall comprise revised paragraph VI B:

B. The Amended Record of Decision (Amended ROD) for this Operable Unit is comprised of the Record of Decision dated September 13, 1989; Explanation of Significant Differences dated January 29, 1991; ROD Amendment #1 dated August 29, 1996; and ROD Amendment #2 dated September 23, 1999, set forth collectively in Appendix A. In general terms, the remedial action(s) in the Amended ROD involve design, construction, operation, maintenance and monitoring of the following: on-property Corrective Action Management Units (CAMUs) for placement of removed on-property soil to achieve Remediation Standards; remediation of impacted soils as defined in the Amended ROD, including soils beneath the capped portion of the process area; on- and off-property groundwater remediation through pump and treat (P&T) and in situ bioremediation (excluding any on-

property Technical Impracticability Waiver remaining in effect) and the implementation of institutional controls to restrict use of portions of the Site to industrial purposes and to restrict activities relating to use and/or disturbance of soil and groundwater at and adjacent to the Site.

SECTION VIII. WORK TO BE PERFORMED

P. 14, line 18 through p. 31, line 18: strike p. 14, line 18 through p. 31, line 18 and insert the following, which shall comprise the revised Section VIII in full:

VIII. WORK TO BE PERFORMED

A. General Obligations Regarding the Remedial Action

1. Defendant shall not conduct any response activities at the Site with respect to the releases addressed by the Amended ROD except: (1) activities specifically authorized under this Section VIII (Work To Be Performed); or (2) activities required by and in furtherance of the work under this Decree; or (3) activities otherwise specifically authorized, in writing, by EPA.

2. Notwithstanding any approvals which may be granted by the United States or other governmental entities, Defendant shall assume any and all liability of the United States arising from or relating to Defendant's acts or omissions or the acts or omissions of any of Defendant's contractors, subcontractors, or any other person acting on Defendant's behalf in the performance of the Remedial Action or Defendant's failure to perform fully or complete the Remedial Action. Nothing in this section shall make Defendant liable for that portion of any negligent act or omission attributed to the United States or other governmental entities or its employees, agents or contractors.

1 6. Defendant shall be liable to EPA for any acts or omissions of any of
2 Defendant's contractors, subcontractors or anyone acting on Defendant's behalf in the
3 performance of the Remedial Action, or Defendant's failure to perform fully or complete the
4 Remedial Action, which constitute a violation of this Decree; provided, however, that
5 Defendant shall not be liable to EPA with respect to that portion of any negligent act or
6 omission attributed to EPA or its employees, agents or contractors.

7 7. With the March 15, 2001 closure of the KII wood treating facility, the
8 remaining portion of Soil Unit S3, also referenced in remediation documents as the Process
9 Area or Area 8C, became available for remediation. Defendant submitted and
10 implemented a schedule for remediation of the remainder of Soil Unit S3. Defendant
11 completed the remediation of the soils identified in the Amended ROD, including soils
12 beneath the capped portion of the process area, by September 20, 2002.

13 8. Defendant shall prepare a site-wide Remedial Action Work Plan ("Work
14 Plan") for all soil and ground water remediation tasks set out in the SOW and the
15 Amended ROD and implement the tasks detailed in the Work Plan as approved and/or
16 modified by EPA. The Work Plan will contain a schedule of deliverables. The fully
17 approved Work Plan shall be deemed incorporated into and made an enforceable part of
18 this Decree. Upon approval of the Work Plan by EPA, Defendant shall file a copy of the
19 Work Plan with the Court to be incorporated into this Decree as Appendix D. Any
20 noncompliance with any EPA approved reports, plans, specifications, schedules, appendices
21 or attachments to the Work Plan shall be considered a failure to comply with this Decree
22 and shall subject Defendant to stipulated penalties as provided in Section XX (Stipulated
23 Penalties). All work shall be conducted consistent with the National Contingency Plan, the
24 EPA Superfund Remedial Design and Remedial Action Guidance (OSWER Directive
25 9355.0-4A and any amendments thereto), and the requirements of this Decree, including the
26 standards, specifications and schedules contained in the Work Plan.

1 9. The Parties acknowledge and agree that the Work Plan or any approvals,
2 permits or other permissions which may be granted by EPA related to this Decree do not
3 constitute a warranty or representation of any kind by the United States or Defendant that
4 the Work Plan will achieve the Remediation Standards set forth in the Amended ROD, and
5 shall not foreclose the United States from seeking performance of all terms and conditions of
6 this Decree.

7 10. Defendant shall meet all Remediation Standards identified in the Amended
8 ROD with respect to the Remedial Action at the Site, including those listed in Appendix B
9 attached hereto.

10 11. The Parties acknowledge and agree that work performed in the
11 implementation of the Remedial Action shall comply with the substantive standards of all
12 "applicable requirements" and "relevant and appropriate requirements" as those terms are
13 defined in 40 C.F.R Sec. 300.6, and as generally described in CERCLA Compliance with
14 Other Environmental Statutes, October 2, 1985 (50 Fed. Reg. 47946, November 20, 1985),
15 and as is required by Section 121 of CERCLA, 42 U.S.C. Section 9621.

16 12. Defendant shall dispose of any materials containing or contaminated with
17 Site-related constituents not approved for disposal in an on-property CAMU and taken off-
18 Property in compliance with EPA's Revised Procedures for Implementing Off-Site
19 Response Actions ("Off-Site Policy") (EPA OSWER Directive 9384.11, November 13, 1987)
20 and any amendments thereto.

21 13. Defendant shall submit a draft and final of all deliverables unless otherwise
22 specified in paragraph C(2) (Deliverables) of this section. Any failure by Defendant to
23 submit either a draft or final deliverable in compliance with the schedules in the approved
24 Work Plan will be deemed a violation of this Decree subject to stipulated penalties.

25 14. After review of any plan, report, draft deliverable or other item which is
26 required to be submitted for approval by EPA pursuant to this Decree, EPA will (a)
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1 approve or modify the submission; or (b) disapprove the submission, notifying Defendant of
2 the deficiencies and providing a statement of the reasons EPA deems any deliverable to be
3 deficient.

4 15. Defendant shall, within the time specified in the Work Plan or Amendment
5 either: (a) proceed to take any action required by the approved or modified submission; (b)
6 correct the deficiencies as determined by EPA and resubmit the plan, report, draft or other
7 item for approval; or (c) invoke dispute resolution under Section XXII. In the event EPA
8 determines that there are deficiencies in the submissions, Defendant shall proceed, at the
9 direction of EPA, to take any action required by any non-deficient portion of the
10 submission.

11 16. Any failure by Defendant to revise, modify or correct a submittal as
12 directed by EPA within the time specified in the Work Plan will be deemed a violation of
13 this Decree. Implementation of non-deficient portions of the submission shall not relieve
14 Defendant of its liability for stipulated penalties under Section XX (Stipulated Penalties).

15 17. All documents submitted to EPA for approval pursuant to this Decree shall
16 be sent by overnight mail or some equivalent delivery service to the EPA Project
17 Coordinator or in an electronic format if and as approved by EPA.

18 **B. Alternative Water Supply**

19 1. Defendant shall continue to finance the provision of an alternative water
20 supply for those water users who have not yet met the obligation criteria specified in this
21 paragraph. Defendant shall continue to pay to such users on an annual basis an amount
22 equal to the average water use bill for all domestic users served by the OWID in the
23 applicable year, and reimburse such users for any amount expended by such users in excess
24 of the average bill for the purchase of water for domestic use (including domestic irrigation)
25 in accordance with OWID regulations. Defendant's obligation shall cease for any such user
26 when the concentration of pentachlorophenol in the well of such user falls below fifty (50)
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1 per cent of the Amended ROD's remedial objective for pentachlorophenol for four
2 consecutive quarterly sampling events and an engineering assessment approved by the EPA
3 demonstrates that reactivation of the well will not draw any remaining pentachlorophenol
4 (PCP) at fifty (50) percent of the Amended ROD's remedial objective to the well.

5 a) Potential additional areas. Defendant shall continue its monitoring
6 of ground water on- and off-Property pursuant to an EPA-approved ground water
7 monitoring program. If PCP is found as close to an existing unmonitored drinking water
8 well as the distance it takes groundwater to flow in a year, the well shall be added to the
9 monitoring program on a quarterly basis. If testing of any well shows PCP concentrations in
10 excess of 50% of the Amended ROD's Remediation Standard for PCP, twice within a one
11 year period, Defendant shall pay for the connection of the user of the well to the OWID.
12 Defendant shall pay such user the amounts described above until both the concentration of
13 PCP in the well of such user falls below fifty (50) percent of the Amended ROD's remedial
14 objective for PCP for four consecutive quarterly sampling events; and an engineering
15 assessment approved by the EPA demonstrates that reactivation of the well will not draw
16 any remaining PCP at fifty (50) percent of the Amended ROD's remedial objective to the
17 well. Defendant shall have no further obligations under this Decree with respect to an
18 alternative water supply upon receipt by Defendant of a Certificate of Completion pursuant
19 Section XXXVII (Certificate of Completion) of this Decree.

20 2. Defendant shall provide an alternative water supply for any wells on or off-
21 Property that EPA determines, when used, have an adverse impact on the remediation of
22 ground water containing Site-related constituents. Defendant's obligation under this
23 subparagraph 2 shall not take effect for any well until the remedial activities impacted by
24 such well actually commence.

25 C. Work To Be Undertaken

26 1. The work required under this Amended Consent Decree for the Amended
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1 ROD supersedes and adds to the work contained in provision C of the original Consent
2 Decree CIV. S-91-767 LKK dated February 6, 1992. Defendant shall implement the EPA-
3 approved Remedial Action Work Plan and any amendments described in paragraph 2(c)
4 below, including:

5 a) Achieve Remediation Standards for groundwater on- and off-
6 Property (excluding any on-Property Technical Impracticability Waiver (TIW) remaining
7 in effect) using pump and treat (P&T) and/or in situ bioremediation remedies as specified in
8 ROD Amendment #2 dated September 23, 1999. The remedies shall consist of:

9 i) Design, construction, operation, maintenance and monitoring
10 of groundwater extraction, treatment and reinjection systems to restore on- and off-
11 property groundwater to Remediation Standards. In addition to treating contaminants, the
12 on-property P&T shall contain contaminants on-property in all layers of the aquifer. Off-
13 Property, P&T remains a remedy option pursuant to the Amended ROD to remediate the
14 contaminated groundwater and contain the toe of the plume off-property in all layers of the
15 aquifer.

16 ii) Design of an effective nutrient dispersal system for *in situ*
17 bioremediation on- and off-property and procurement of nutrients to achieve Remediation
18 Standards. On-Property *in situ* bioremediation will supplement P&T. Off-Property *in situ*
19 bioremediation can be used as a stand alone remedy or as a supplement to P&T as long as
20 the contamination off-property is contained in all layers of the aquifer.

21 iii) The TIW for ARARs at the on-Property former creosote
22 pond and former Cellon Blowdown Areas granted in ROD Amendment #2, dated
23 September 23, 1999, requires a new monitoring well downgradient of the TI Zone in aquifer
24 B; monitoring of the TI Zone and downgradient until EPA shall determine that it is no
25 longer necessary for protection of human health and the environment; operation of the
26 existing Product Recovery well (PR-1) and the PAH *in situ* groundwater bioremediation
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1 well (BW-1) (or any subsequent replacement PAH treatment system) until creosote recovery
2 is less than one gallon per year at the Product Recovery well (or its subsequent replacement
3 system); maintenance of the on-property P&T once Remediation Standards are met outside
4 the TI Zone as long as the TI Zone remains in effect; operation of the on-Property P&T
5 after being placed in standby reserve if 95% of the upper confidence limit of the mean for
6 four consecutive sampling events for a chemical of concern exceeds the ROD Standard; and
7 implementing institutional controls in the form of a land use covenant to prevent access to
8 groundwater, surface disturbance and the addition of new sources of surface water to
9 groundwater in the TI Zone.

10 iv) Provision for implementation of Monitored Natural
11 Attenuation (MNA) as a contingency remedy on- and off-Property if EPA determines that
12 enhanced in situ bioremediation nutrient distribution cannot be adequately achieved; that
13 other active restoration measures are not necessary; that conditions on- and off-Property
14 continue to demonstrate that pentachlorophenol (PCP) degradation is occurring; and that
15 natural attenuation is expected to achieve Remediation Standards within a reasonable time
16 frame, all pursuant to ROD Amendment #2.

17 b) The monitoring and maintenance in perpetuity of Corrective Action
18 Management Units (CAMUs) on-Property and other remedies on-property to achieve
19 Remediation Standards for soils consisting of:

20 (i) Excavated Soil Unit contaminants on-Property to reach
21 Remediation Standards were placed in on-property CAMUs conforming to the
22 requirements of the ARARs contained in ROD Amendment #1, dated August 1996 or
23 latest revision to applicable state and federal regulations.

24 c) Institutional Controls in the form of a land use covenant will be filed
25 and recorded with the Butte County Recorder's Office and implemented to restrict the
26 200 acre site to industrial use, to prevent surface water impoundments that could cause
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1 flushing of contamination into the aquifer, to protect caps installed to protect infiltration
2 to groundwater and ensure TI Zone restrictions. The land use covenant required by this
3 section will be recorded on or before August 1, 2003 and shall be substantially in the form
4 of the document attached hereto as Appendix E. Concurrently with the recording of the
5 land use covenant required by this section, defendant will cause to be provided to EPA a
6 current title insurance commitment or other evidence of title to the Site acceptable to EPA,
7 which shows title to the land described in the covenant to be free and clear of all prior
8 liens and encumbrances (except such liens and encumbrances approved by EPA or such
9 liens and encumbrances as to which, despite best efforts, Defendant is unable to obtain
10 release or subordination).

11 2. Deliverables

12 The following deliverables shall constitute Defendant's Work Plan for the remaining
13 work to be performed:

14 a) Final Site Closure Corrective Action Management Units Report

15 Addendum: No draft, final due by January 31, 2003.

16 b) Long-term groundwater Remediation Work Plan for Dri-Con/CAA

17 Source Area: draft, March 17, 2003, final due 45 days after receipt of EPA comments on
18 draft.

19 c) Off-Property Groundwater Remediation Attainment Phase Data

20 Quality Objectives Work Plan: draft sixty (60) days from EPA request and final thirty
21 (30) days from EPA draft approval/comments.

22 d) On-Property Groundwater Remediation Attainment Phase Data

23 Quality Objectives Work Plan: draft sixty (60) days from EPA request and final thirty
24 (30) days from EPA draft approval/comments.

25 e) TI Zone Groundwater Monitoring Plan Work Plan Revision when

26 On-Property Outside Technical Impracticability Zone is Remediated: draft six months
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1 prior to on-property P&T going on standby reserve and final thirty (30) days from EPA
2 draft approval/comments.

3 f) TI Zone Contingency Plan: draft six months prior to on-property
4 P&T going on standby reserve and final forty-five (45) days from EPA draft
5 approval/comments.

6 g) Proof of recording of land use covenant as required by this Decree,
7 on or before August 1, 2003.

8 h) Proof of Insurance Coverage: No draft. Final forty-five (45) days
9 before start of any site work.

10 i) Annual Alternative Water Supply Payments Report: No draft. Final
11 April 30 each year until complete.

12 j) Well Owner Notification of Alternative Water Supply Subsidy
13 Termination Letter: No draft. Final forty-five (45) days after EPA approval of well
14 sample data.

15 k) Annual Remedial Action Groundwater Monitoring Report: No draft.
16 Final three months after December 31 until remedy complete. The Report is to include:

17 i) Annual Off-Property In-Situ Bioremediation Evaluation
18 Report,

19 ii) Annual On-Property In-Situ Bioremediation Evaluation
20 Report,

21 iii) Annual TI Zone Source Reduction Report (PR-1 & BW-1),
22 and

23 iv) Monitoring CAMUs groundwater, maintenance monitoring
24 and integrity of CAMUs.

25 l) Semi-Annual Remedial Action Groundwater Report: No draft. Final
26 three months after June 30 until remedy complete. The Report is to include:

1 i) Semi-Annual Off-Property In-Situ Bioremediation Evaluation
2 Report,

3 ii) Semi-Annual On-Property In-Situ Bioremediation Evaluation
4 Report,

5 iii) Semi-Annual Technical Impracticability Zone Source
6 Reduction Report (PR-1 & BW-1), and

7 iv) Monitoring CAMUs groundwater and integrity of CAMUs.

8 m) Annual review and update at least every five years of quality
9 assurance; quality control; health and safety; and spill prevention and counter measures
10 documents such as but not limited to Field Sampling Plans, Standard Operating
11 Procedures, Sampling Analysis Plans and Quality Assurance Project Plan.

12 n) Monthly Status Reports: Defendant shall provide written or
13 electronic progress reports to EPA and any EPA contractor on a monthly basis. These
14 progress reports shall describe all actions taken to comply with this Decree, including a
15 general description of activities commenced or completed during the reporting period,
16 schedule for Remedial Action activities projected to be commenced, completed, or
17 submitted during the next quarter, and any problems that have been encountered at the
18 Site or that are anticipated by Defendant in commencing or completing the Remedial
19 Action activities. These progress reports shall be submitted to EPA by the 10th day of each
20 month for work done the preceding month and planned for the next quarter. Electronic
21 submission is acceptable in a form approved by the EPA and no draft is required.

22 o) Conceptual Design Reports, with 30% plans and specifications, for
23 each of the following: any additional CAMU beyond cells 1 and 2; any new P&T facility
24 beyond the current 400gpm on-Property and 600gpm off-Property P&T facilities; any
25 relocated P&T; and any expanded phases of all soil and groundwater remedies. These
26 Conceptual Design Reports shall include:

- 1 i) documentation of compliance with ARARs;
2 ii) results of modeling and treatability studies as appropriate;
3 iii) Site safety plan, including a worker health and safety plan
4 and an emergency response plan;
5 iv) well locations for extraction/reinjection, monitoring
6 extraction effectiveness, injection influences, perimeter control monitoring and monitoring
7 of the vadose zone as applicable to each unit;
8 v) selection of design criteria necessary to meet RCRA Land
9 Disposal Restrictions for any area containing soils determined to be RCRA waste;
10 vi) equipment setup plans; and
11 vii) dust control plans.

12 p) Prefinal Design Reports, which shall show 70% completion of the
13 design, for each of the following: any additional CAMU beyond cells 1 and 2; any new
14 P&T facility beyond the current 400gpm on-Property and 600gpm off-Property P&T
15 facilities; any relocated P&T; any extraction well system for soil unit S3; and any
16 expanded phases of all soil and groundwater remedies. These Prefinal Design Reports
17 shall include:

- 18 i) construction drawings;
19 ii) specifications;
20 iii) schedules;
21 iv) cost estimates;
22 v) draft operation and maintenance plan; and
23 vi) plan for controlling surface water runoff during RA.

24 q) Final Design Reports for each of the following: any additional
25 CAMU beyond cells 1 and 2; any new P&T facility beyond the current 400gpm on-
26 Property and 600gpm off-Property facilities; any relocated P&T; and any expanded
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1 phases of all soil and groundwater remedies. These Final Design Reports shall include:

2 i) all revisions of and additions to the 70% design;

3 ii) final construction drawings; and

4 iii) final bid documents.

5 r) Semianual progress reports on the effectiveness of the treatment
6 technologies in meeting Remediation Standards. The semiannual progress reports shall be
7 submitted on or before the nineteenth day after the end of each six month period following
8 the effective date of this Decree to allow for data QA/QC. No draft is required.

9 s) Technical and documentation support for five year statutory
10 review of remedy protectiveness in accordance with EPA's most recent guidance.

11 3. After review of any plan, report, draft deliverable or other item which is
12 required to be submitted for approval by EPA pursuant to this Decree, EPA will (a)
13 approve or modify the submission; or (b) disapprove the submission, notifying Defendant
14 of the deficiencies and providing a statement of the reasons EPA deems any deliverable to
15 be deficient.

16 4. Defendant shall, within the time specified in the Work Plan, either: (a)
17 proceed to take any action required by the approved or modified submission; (b) correct
18 the deficiencies as determined by EPA and resubmit the plan, report, draft or other item
19 for approval; or (c) invoke dispute resolution under Section XXII. In the event EPA
20 determines that there are deficiencies in the submissions, Defendant shall proceed, at the
21 direction of EPA, to take any action required by any non-deficient portion of the
22 submission.

23 5. Any failure by Defendant to revise, modify or correct deficiencies as directed
24 by EPA within the time specified in the Work Plan will be deemed a violation of this
25 Decree. Implementation of non-deficient portions of the submission shall not relieve
26 Defendant of its liability for stipulated penalties under Section XX (Stipulated Penalties).

1 6. All documents submitted to EPA for approval pursuant to this Decree shall
2 be sent by overnight mail or some equivalent delivery service to the EPA Project
3 Coordinator or in an electronic format if and as approved by EPA.
4

5 **SECTION XV. ASSURANCE OF ABILITY TO COMPLETE WORK**
6

7 Paragraph XV A, p. 39, line 15, insert after "Decree", "or at such other time as
8 agreed by EPA"; line 16, strike "or"; line 17, before period at end of sentence insert "or 4)
9 insurance for the total estimated cost of the Remedial Action in a form and with endorsements
10 satisfactory to EPA".

11 The first sentence of paragraph XV A shall, therefore, provide as follows:

12 **Defendant shall demonstrate its ability to complete the Remedial Action and to**
13 **pay all claims that arise from the performance of the Remedial Action by obtaining, and**
14 **presenting to EPA for approval within 30 calendar days after the effective date of this**
15 **Decree, or at such other time as agreed by EPA, one of the following items: 1) a**
16 **performance bond; 2) a letter of credit; 3) a guarantee by a third party equaling the total**
17 **estimated cost of the Remedial Action or 4) insurance for the total estimated cost of the**
18 **Remedial Action in a form and with endorsements satisfactory to EPA.**

19 Paragraph XV A, p. 40, line 2, strike "three".

20 The last sentence of paragraph XV A shall, therefore, provide as follows:

21 **If at any time EPA determines the assurances to be inadequate, Defendant shall**
22 **obtain one of the other financial instruments listed above within thirty (30) days of such**
23 **EPA determination.**
24

25 **SECTION XIX. REIMBURSEMENT OF UNITED STATES' COSTS**
26
27
28

1 Paragraph XIX A, p. 45, lines 21-22, strike "after March 31, 1988 through and
2 including September 30, 1990" and insert "after September 30, 1990 ". Add at the end of this
3 sentence a new sentence: "Amounts paid to the United States under this Consent Decree shall be
4 deposited into the Koppers Company, Inc. Special Account and shall be retained and used to
5 conduct or finance response actions at or in connection with the Site or transferred by EPA to
6 the Hazardous Substance Superfund."

7 The first two sentences of paragraph XIX A shall, therefore, provide as follows:

8 **Defendant agrees pursuant to this Consent Decree to reimburse the**
9 **Hazardous Substance Superfund for all Response and Oversight costs incurred by the**
10 **United States, including but not limited to EPA and the United States Department of**
11 **Justice ("DOJ"), with respect to the Site after September 30, 1990, not inconsistent with**
12 **the NCP, within thirty (30) days of EPA's demand and documentation for such costs.**
13 **Amounts paid to the United States under this Consent Decree shall be deposited into the**
14 **Koppers Company, Inc. Special Account and shall be retained and used to conduct or**
15 **finance response actions at or in connection with the Site or transferred by EPA to the**
16 **Hazardous Substance Superfund.**

17 Paragraph XIX C (1), p. 47, line 14, strike "CDMS data" and insert "Official Cost
18 Summary"; XIX C (2), p. 47, line 27, strike "CDMS data" and insert "Official Cost Summary".

19 The first clause of the first sentence of paragraph XIX C(1) shall, therefore, provide
20 as follows:

21 **For past costs described in paragraph A above, EPA will furnish Defendant**
22 **with EPA's Official Cost Summary,**

23 The first clause of the first sentence of paragraph XIX C(2) shall, therefore, provide
24 as follows:

25 **For ongoing response and oversight costs described in paragraph B above,**
26 **EPA will furnish Defendant with EPA's Official Cost Summary**
27
28

1 **SECTION XX. STIPULATED PENALTIES**

2
3 Paragraph XX F, p. 52, line 13 through p. 53, line 23: strike p. 52, line 13 through p.
4 53, line 23 and insert the following, which shall comprise revised paragraph XX F:

5 **F. Defendant shall pay the following stipulated penalties for each failure to**
6 **comply with the requirements of this Decree:**

7 **1. Class I Requirements**

8 For late or otherwise noncomplying submission of an Annual Submission of Financial
9 Assurance, Annual Alternative Water Supply Payments Report, Well Owner Notification
10 of Alternative Water Supply Subsidy Termination Letter, Annual Remedial Action
11 Groundwater Monitoring Report, Semi-Annual Remedial Action Groundwater
12 Monitoring Report, Final Site Closure Corrective Action Management Units Report
13 Addendum, Annual review and five year update of QA/QC documents, five year remedy
14 review technical and documentation support and Monthly Status Report: Five Hundred
15 Dollars (\$500) per day.

16 **2. Class II Requirements**

17 For late or otherwise noncomplying submission of any deliverable other than the
18 deliverables described under subparagraph F(l) of this Section or for any other failure to
19 comply with the requirements of this Decree:

20

| <u>Period of Failure to Comply</u> | <u>Penalty per Violation per Day</u> |
|--|--------------------------------------|
| 21 1st through 14 th day | 22 \$2,000 |
| 22 15th through 30 th day | 23 \$5,000 |
| 23 31st day and beyond | 24 \$12,000 |

25 **G. The amount of stipulated penalties due for each violation under this Section is not**
26 **subject to dispute resolution under Section XXII (Dispute Resolution).**
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1 One Oxford Centre, Suite 3000
2 Pittsburgh, PA 15219-6401

3
4
5 General Counsel

6 Beazer East, Inc.

7 c/o Three Rivers Management, Inc.

8 One Oxford Centre, Suite 3000
9 Pittsburgh, PA 15219

10
11
12
13 Jennifer Abrahams

14 Feather River Project Manager

15 GeoTrans, Inc.

16 3035 Prospect Park Dr., Suite 40
17 Rancho Cordova, CA 95670

18
19
20 As to State of California:

21
22 Edward Cargile

23 California Environmental Protection Agency

24 Region 1

25 Site Mitigation Branch

26 8800 Cal Center Drive

1 Sacramento, CA 95826-3200

2
3
4 Philip Woodward

5 California Regional Water Quality Control Board

6 Central Valley Region

7 415 Knollcrest Drive, Suite 100

8 Redding, CA 96002

9
10 SECTION XXIV. MODIFICATION

11
12 p. 62, lines 7 through 13: after "NCP" in line 7 strike remaining text through line
13 13 and insert period (".")

14 The last sentence of Section XXIV shall, therefore, provide as follows:

15 In addition, nothing herein shall be deemed to limit EPA's authority to modify
16 the ROD in accordance with CERCLA and the NCP.

17 Appendices:

18 Delete Appendix A and substitute Appendix A as amended, attached hereto.

19 Appendix B: Change background level for Barium from 680 to 1000

20 Change background level for Pentachlorophenol from 2.2 to 1.0

21 Delete Appendix C and substitute Appendix C as amended, attached hereto.

22 Add new Appendix E, attached hereto.

1 SIGNED and ENTERED this day of 2003

2
3
4
5 UNITED STATES DISTRICT JUDGE

6
7
8 By the signatures below the Parties hereby agree to the foregoing Amended
9 Consent Decree:

10
11 FOR DEFENDANT BEAZER EAST, INC.

12
13 
14 ROBERT S. MARKWELL

DATE: 5/14/03

15 Vice President and General Manager, Program Services

16 Agent for Service of Process:
17 Vice President, Secretary and General Counsel
18 Beazer East, Inc.
19 One Oxford Centre, Suite 3000
20 Pittsburgh, PA 15219

21 FOR PLAINTIFF UNITED STATES OF AMERICA

22
23 _____ DATE: _____
24 Assistant Attorney General
25 Environment and Natural Resources Div.
26 United States Department of Justice
27 Washington, D.C. 20044

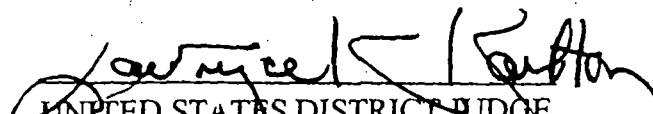
28
29 NA
30 _____
31 United States Attorney

DATE: _____

32
33 
34 Director, Superfund Division

DATE: 6-24-03

1 SIGNED and ENTERED this 22 day of Sept 2003

2
3
4 
5 UNITED STATES DISTRICT JUDGE
6
7

8 By the signatures below the Parties hereby agree to the foregoing Amended
9 Consent Decree:

10
11 FOR DEFENDANT BEAZER EAST, INC.

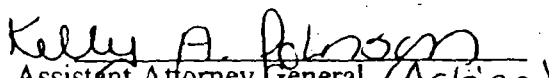
12
13 
14 ROBERT S. MARKWELL

DATE: 5/14/03

15 Vice President and General Manager, Program Services

16 Agent for Service of Process:
17 Vice President, Secretary and General Counsel
18 Beazer East, Inc.
19 One Oxford Centre, Suite 3000
20 Pittsburgh, PA 15219

21 FOR PLAINTIFF UNITED STATES OF AMERICA

22 
23 Assistant Attorney General (Acting)
24 Environment and Natural Resources Div.
25 United States Department of Justice
26 Washington, D.C. 20044

DATE: 6/18/03

27 NA
28 United States Attorney

DATE: _____

Director, Superfund Division

DATE: _____

1 Environmental Protection Agency
2 Region IX
3 75 Hawthorne Street
4 San Francisco, California 94105

5 Mr. Neimische
6 Environment & Natural Resources Div.
7 U.S. Department of Justice
8 P.O. Box 7611
9 Ben Franklin Station
10 Washington, D.C. 20044

DATE: 6-10-03

1 CERTIFICATE OF SERVICE

2
3 The undersigned hereby certifies that she is an employee in
4 the Office of the United States Attorney for the Eastern District
5 of California and is a person of such age and discretion to be
6 competent to serve papers. That she served a copy of

7 STIPULATED AMENDMENT TO CONSENT DECREE

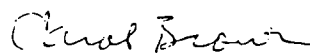
8 AND (PROPOSED) ORDER

9 in the case captioned United States of America v. Beazer East,
10 Inc., NO. S 91-767 by placing said copy in a postpaid envelope
11 addressed to the person(s) hereinafter named, at the place(s) and
12 address(es) stated below, which is/are the last known
13 address(es), and by depositing said envelope and its contents in
14 the United States Mail at Sacramento, California;

15
16 Addressee(s):

17 William F. Giarla
18 One Oxford Center
19 Suite 3000
Pittsburgh, PA 15219-6401

20 Dated: September 17, 2003

21 
22 Carol Brown
23 Legal Assistant
24
25
26
27
28